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## LEGAL UPDATE

Legal Services Division



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### ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — JANUARY 10, 2020

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

**SECRETARY OF STATE, *Felony Conviction Verification Process, 12/18/19 IAB, ARC 4804C, NOTICE. Background.*** In order to clarify the roles of the judicial branch, the Secretary of State's office, and county auditors regarding the felon database used to determine if a person is a felon who is barred from voting in Iowa unless their rights are restored, this rulemaking requires the Secretary of State's office to verify a felony conviction prior to forwarding the voter's information to county auditors who then complete the cancellation process. This verification process is intended to improve the accuracy of the database.

**Commentary.** Committee members and Ms. Molly Widen, speaking on behalf of the Secretary of State, discussed the Secretary's new felony conviction verification process. Ms. Widen explained that the rulemaking sets out the process for verification from 2020 going forward, with old records undergoing review. She explained that the verification process is a separate issue from restoration of felons' voting rights. She explained that there have been erroneous cancellations of voter registrations due to poor data received from the judicial branch. She noted that the cancellations are carried out by county auditors after receiving notifications from the Secretary based on data from the judicial branch. Additional discussion occurred regarding felonies committed in other states that might have different definitions than Iowa. Ms. Widen explained that the Secretary has no mechanism for tracking felonies committed out of state or how other states define felonies and has no data on this matter. She explained that caselaw in Iowa provides that persons who have committed infamous crimes, defined as felonies, are ineligible to vote, and individuals who have committed felonies in other states are responsible for knowing their voter eligibility status. She explained that such persons should contact the Governor's office about seeking restoration of voting rights and that any further clarification of the question would need to be sought from legislative action if caselaw, statutory law, and the Iowa Constitution do not provide sufficient clarity. She noted the Secretary could seek advice from the Attorney General's office if specific questions on this matter arose.

Mr. Daniel Zeno spoke on behalf of the American Civil Liberties Union. He expressed support for the Secretary establishing a felony conviction verification process when there was none before, which had led to erroneous cancellation of voter registration in some cases. He stated that the rulemaking was brief and written very broadly, with little detail about what the Secretary and the judicial branch would actually do. He stated that the rulemaking should describe all of the steps of the verification process and include a month-by-month plan for completing all verification of past records by the 2020 election as well as a process for notification of voters whose registration is cancelled. Committee members urged the Secretary not to make the rule language too prescriptive, which would make revising the verification process in the future more difficult. Ms. Widen explained that the rulemaking can only govern actions that the Secretary will carry out; the rulemaking cannot control the actions of the judicial branch.

**Action.** No action taken.

**PROFESSIONAL LICENSURE DIVISION, *Funeral directors, funeral and cremation establishments—disinterment permits, 1/1/20, ARC 4849C, ADOPTED.* Background.** This rulemaking conforms a Board of Mortuary Science rule with the rules and policies of the Department of Public Health that relate to the issuing of disinterment permits by no longer requiring disinterment permits for cremated remains and also providing that disinterment permits for the relocation of human remains are only necessary for the purposes of autopsy or reburial.

**Commentary.** Committee members questioned why this rulemaking was necessary and why the rulemaking had not been revised after the committee raised concerns when the rulemaking was reviewed on notice. Ms. Melissa Bird, speaking on behalf of the Bureau of Professional Licensure of the Department of Public Health, explained that the rulemaking was necessary to correct a conflict discovered in 2017 between the subrule at issue, 645-100.9(6), and Iowa Code section 144.34 regarding the grounds for which a permit to disinter human or cremated remains can be issued by the Department of Public Health. The department had received a request for a disinterment permit to disinter cremated remains. The department, in consultation with the Attorney General's office, ultimately concluded that the department did not have the statutory authority to issue a disinterment permit for cremated remains, as final disposition of cremated remains occurs prior to their interment. The department also concluded that it could not issue a disinterment permit for a disinterment carried out for reasons other than the two provided in statute: autopsy or reburial. The person making the request wanted to keep the cremated remains at home and not rebury them. Committee members questioned why the bureau had not sought resolution of the issue sooner, such as by requesting a statutory change. Ms. Bird explained that the bureau's role is only to provide administrative support and that the Board of Mortuary Science or a stakeholder could advocate for a statutory change if one is needed. She explained that the board pursued the rulemaking in order to align the rule with current Code so that funeral directors would not be faced with a conflict between statute and rule and possibly be subject to a penalty under the rule.

Committee members stated that it would have been more efficient for the bureau to have sought a departmental bill or at least brought the issue to the attention of legislators sooner. Committee members asked if cremated remains can be moved after burial. Ms. Bird explained that a disinterment permit cannot be issued at that point. Members questioned whether the distinction between cremated and un-cremated remains is appropriate.

Mr. Michael Triplett, speaking on behalf of the Iowa Funeral Directors' Association, asserted that the issue could be most easily resolved statutorily. He explained that the statutory language at issue is quite old, dating to before people were regularly cremated. He urged the committee to impose a session delay on the rulemaking.

**Action.** A motion for a session delay on ARC 4849C carried 9-0 on a short form vote.

**DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP, *Hemp, 1/1/20 IAB, ARC 4841C, NOTICE, also ARC 4842C, FILED EMERGENCY.* Background.** This double-barreled rulemaking includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol (THC), disposing of plants not meeting necessary requirements, establishing licensing requirements, and ensuring compliance with the requirements of the recent federal legislation establishing procedures for authorizing the production of hemp and with further restrictions found in 2019 Iowa Acts, Senate File 599. The rulemaking outlines provisions for the department to submit a state plan for approval from the United States Department of Agriculture (USDA) as required under federal law.

**Commentary.** Committee members and Ms. Robin Pruisner, speaking on behalf of the department, discussed the federal approval process for Iowa's hemp program. Ms. Pruisner explained that the enabling legislation gave the department the authority to waive portions of the legislation if necessary to gain federal approval, but that revising the rulemaking or seeking statutory changes could also be options. She explained that USDA had released an interim federal rule on October 31, 2019, that would

be effective for two years and that contained unexpected provisions, including one that required the harvesting of hemp within 15 days of sampling by the department, which will require that the department allow harvesting to begin immediately after sampling is taken. This will require the department to waive a statutory requirement that samples be tested by the department prior to harvesting, as the department would not be able to carry out the necessary testing of samples within the 15 days.

Committee members expressed concern that the department could use its authority to waive statutory requirements to waive the limit on the amount of THC permissible in a hemp crop. Ms. Pruisner explained that federal requirements limit the THC levels and would supercede any state-level requirements or waivers.

Additional discussion occurred regarding staff levels at the department's hemp testing laboratory, destruction of hemp crops that exceed permissible THC levels, the number of permits to grow hemp that may be issued this year, hemp that already grows naturally in Iowa, how hemp will be sold and used, and possible legislation to ban the smoking of hemp and further regulate the over-the-counter sale of products containing cannabidiol.

Ms. Megan Malloy, speaking on behalf of the Iowa Hemp Association, generally expressed support for the rulemaking, but raised concerns that the rulemaking may be too punitive regarding the presence of hemp that already grows naturally in Iowa, which she explained is a result of industrial hemp grown in Iowa during World War II. She asserted that the presence of such naturally growing hemp does not necessarily indicate wrongdoing on anyone's part.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Room 116, Statehouse, on Friday, February 7, 2020, beginning at 9:00 a.m.

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Doc ID 1,128,184